

Public Acts of 2001

Amendments to Title 33, Tenn. Code Annotated

***Public
Chapter No.**

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| <p>*P.C. 334
Eff. 6/5/01</p> | <p>T.C.A., Section 33-1-101(18), is amended by adding the language ,”senior psychological examiner or certified psychological assistant;” after the language “psychological examiner,” and before the language “social worker who is certified with two (2), years of mental health experience or licensed”.</p> |
| <p>Section 1</p> | |
| <p>Section 2</p> | <p>T.C.A., Section 33-3-120(c), is amended by adding the language “senior psychological examiners, certified psychological assistant” after the language “psychological examiners” and before the word “physicians”.</p> |
| <p>Section 3</p> | <p>T.C.A., Section 33-3-206(1), is amended by adding the language “senior psychological examiner, certified psychological assistant” after the language “psychological examiner” and before the language “behavior analyst”.</p> |
| <p>Section 4</p> | <p>T.C.A., Section 33-3-208(1), is amended by adding the language “senior psychological examiner, certified psychological assistant” after the language “psychological examiner” and before the language “behavior analyst”.</p> |
| <p>Section 5</p> | <p>T.C.A., Section 33-6-427(b)(1), is amended by adding the language “senior psychological examiner” after the language “psychological examiner” and before the language “social worker”.</p> |
| <p>Section 6</p> | <p>T.C.A., Section 33-6-802, is amended by adding the language “or licensed senior psychological examiner or certified psychological assistant” after the language “licensed psychological examiner” and before the word “from”.</p> |
| <p>Section 7</p> | <p>T.C.A., Section 33-6-804(a), is amended by substituting the language “or a licensed senior psychological examiner or a licensed psychological examiner or a certified psychological assistant” after the language “licensed psychologist” and before the language “from the department of correction”.</p> |
| <p>*P.C. 337
Eff. 7/1/01</p> | <p>T.C.A., Section 33-1-309, is amended by designating the existing language as subdivision (a) and adding the following as new subdivisions to be designated as follows:</p> |
| <p>Section 1</p> | <p>(b) All operating guidelines of the division of mental retardation services (hereinafter “division”) and its successors shall be adopted pursuant to the procedure set forth in this subdivision. For purposes of this section “operating guidelines” means instructions to service providers that the division deems or intends to be mandatory upon such providers. Interpretive instructions, other nonmandatory guidance from the division and rules adopted pursuant to the Uniform Administrative Procedures Act</p> |

("UAPA"), codified in T.C.A. Section 4-5-101 et seq., are not operating guidelines.

- (1) The adoption of operating guidelines shall be preceded by notice, public meeting, opportunity for comment and responses to such comments from the division. Provided, however, in those instances in which the division determines that exigent circumstances require that the operating guideline be implemented prior to a public meeting, the division shall begin the process required by this section as soon as reasonably practicable after its implementation.
 - (2) The division shall provide notice in the Tennessee administrative register which shall include a general description of the subject of the operating guideline, the date, place and time of the public meeting and the opportunity for interested persons to provide oral or written comments. The date of the public meeting shall be no sooner than the first day of the month following the month of publication of the notice. The notice shall also include the name, address and telephone number of a contact person to provide additional information, including, if available, copies of the proposed operating guideline.
 - (3) A representative of the division shall be present to hear comments at a hearing required by this section. Such representative shall be a person designated by the deputy commissioner of the division who is a director level or higher employee. This designee shall be authorized to conduct the meeting in such a manner as to provide reasonable opportunity for all interested persons to provide comments.
 - (4) Within thirty (30) days after the meeting, the division shall provide responses to the specific comments received and shall state the reasons for accepting or rejecting the comments. The division shall maintain an official record of the meeting, submitted comments and any responses.
- (c) Mandatory instructions meeting the definition of operating guidelines set forth in subsection (b) which have been implemented prior to July 1, 2001, shall not be required to be readopted pursuant to the provisions of subsection (b) unless the division receives a petition signed by twenty-five (25) interested persons requesting a public meeting on such instruction. In such case, the division shall provide notice, a public meeting, opportunity for comment and responses to comment as set forth in subsection (b). An instruction that is the subject of such petition shall remain in effect. In the event that a proper petition is presented under this subsection and the division determines that the same or substantially related issues are under consideration as a proposed operating guideline, the matters may be consolidated to avoid duplication.
- (d) All methodology utilized by the division for determining payment to

service providers shall be adopted as rules in accordance with the Uniform Administrative Procedures Act ("UAPA"), codified at T.C.A. Section 4-5-101 et seq. which shall be consistent among providers providing substantially the same services.

- *P.C. 282
Section 1
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- T.C.A., Section 33-2-402, is amended by adding a new item as follows:
"Personal support services" means nursing consultation, education services, therapy services and other personal assistance services as defined by rule, which are provided to individuals with substantial limitation in two or more major life activities in either their regular or temporary residences, but does not mean direct nursing services or direct therapy services provided in connection with an acute episode of illness or injury. *{**Acts 2001, ch. 282, is effective July 1, 2001; for rulemaking purposes only, the act takes effect May 22, 2001.}*
- Section 2
- T.C.A., Section 33-2-401, is amended by deleting the phrase "Mental Health and Developmental Disabilities Licensure Law" and substituting instead the phrase "Mental Health, Developmental Disability, and Personal Support Services Licensure Law". [Acts 2001, ch. 282, is effective July 1, 2002; for rulemaking purposes only, the act takes effect May 22, 2001.]
- Section 3
- T.C.A., Section 33-2-403, is amended by deleting from subsection (a) the phrase "mental health and developmental disabilities services" wherever it appears and substituting instead the phrase "mental health, developmental disability, and personal support services"; and by deleting from paragraph (d)(2)(F) the phrase "Four (4)" and substituting instead the phrase "Five (5)"; and by adding to paragraph (d)(2) the following subdivision to be appropriately designated:
(___) a representative of a personal support services agency.
- Section 4
- T.C.A., Section 33-2-405, is amended by deleting the phrase "mental health or developmental disability service" and substituting instead the phrase "mental health, developmental disability, or personal support service".
- Section 5
- T.C.A., Section 33-2-406, is amended by deleting from subsection (a) the phrase "mental health or developmental disability services" and substituting instead the phrase "mental health, developmental disability, or personal support services"; and by deleting from subsection (b) the phrase "mental health or developmental disability service" and substituting instead the phrase "mental health, developmental disability, or personal support services".
- Section 6
- T.C.A., Section 33-2-411, is amended by deleting from subsections (a) and (b) the phrase "mental health or developmental disabilities services" and substituting instead the phrase "mental health, developmental disability, or personal support services".

- Section 7 T.C.A., Section 33-2-416, is amended by deleting from subsection (a) mental health or developmental disabilities services” wherever it appears and substituting instead the phrase “mental health, developmental disability, or personal support services”.
- Section 8 T.C.A., Title 33, Chapter 2, Part 4, is amended by adding the following new section to be appropriately designated:
- Section 33-2-419
- (a) Any individual employed by a personal support services agency to provide personal support services must complete standardized training and continuing education under department rules.
- (b) The department may create classifications for personal support services agencies specializing in a type of service or care and may require additional training and continuing education for such classifications.
- Section 9 T.C.A., Title 33, Chapter 2, Part 4 is amended by adding the following section:
- Section 33-2-420
- If an agency is licensed as a personal support services agency under this title, it does not have to be licensed under Title 68, Chapter 11, Part 2, as a home care organization to provide personal support services. If an agency is licensed under Title 68, Chapter 11, Part 2, as a home care organization, it does not have to be licensed under this title to provide personal support services.
- *P.C. 299 T.C.A., Title 33, Chapter 2, is amended by adding a new section to be
Eff. 5/29/01 designated as Section 33-2-408 and renumbering the existing sections accordingly. The new section shall read as follows:
- Section 33-2-408
- (a) All proceedings by the division of mental retardation services, to impose sanctions against licensed entities under this title shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The proceedings shall include notice and opportunity for a hearing before an administrative law judge who shall issue an initial order.
- (b) Sanctions shall include any action by the division, based upon alleged deficient practices of the licensed entity, to impose financial or contractual penalties including the following:
- (1) Financial penalties shall include fines, liquidated damages or denial, withholding or delay of a payment as a sanction against such entity.

- (2) Imposition of moratoria on admissions when such limitations are unrelated to state budget considerations.
- (3) Actions against the entity based upon allegations that the entity is responsible for abuse, neglect or mistreatment of an individual for whom the entity is responsible.
- (c) Sanctions do not include any action to recoup monies that are determined by the division to be unearned, according to stipulations specified in the provider agreement between the division and the provider.
- (d) The provisions of this section shall not prevent termination of any contract with the licensed entity in accordance with the provisions of that contract. In such cases the contractor shall have only the due process rights, if any, otherwise provided by law regarding termination of state contracts.
- (e) All sanctions, except for financial sanctions, may be imposed immediately by the division. This does not prevent the provider from appealing the decision using the UAPA process.
- (f) These requirements shall not prevent the division or the provider from pursuing alternative means of resolving issues related to sanctions while the UAPA process is pending.

*P.C. 349 Eff. 6/7/01	T.C.A., Section 33-3-503, is amended by deleting the following language from subsection (c)(2):
Section 1	"No reimbursement to an attorney under this subsection shall exceed one hundred dollars (\$100) for each day of in-court proceedings, with a maximum compensation for any one (1) proceeding of five hundred dollars (\$500)."
Section 2	T.C.A., Section 33-2-702, is amended by inserting the language "and to actively supervise such regulation to the fullest extent required by law" between the language "in this part" and "in order to promote".
Section 3	T.C.A., Section 33-2-704(c), is amended by adding the following language at the end of the subsection: Should the department determine that additional time is needed to review the application, the department, upon written notice to the applicants, the attorney general and reporter and any intervenor, may extend the time for review for a period of thirty (30) days except that, in the discretion of the commissioner, the period may be extended for an additional thirty (30) days.
Section 4	T.C.A., Section 33-2-704(f), is amended by deleting the words "department shall" and by substituting instead the words "department may".
Section 5	T.C.A., Section 33-2-704(g), is amended by deleting the words "agreement shall" and by substituting instead the words "agreement may".

- Section 6 T.C.A., Section 33-2-704(h), is amended by adding the following language at the end of the subsection:
Should the attorney general and reporter, after consultation with the department, determine that it is necessary to consult with the United States Department of Justice or the Federal Trade Commission, or determines that further information is needed to review the application, the department, upon written notice to the applicant, attorney general and reporter, and any intervenor, may extend the time for approval or disapproval of an application an additional forty-five (45) days.
- Section 7 T.C.A., Section 33-2-704(j), is amended by deleting the language “with the department within thirty (30) days after termination”.
- Section 8 T.C.A., Section 33-2-704, is amended by adding the following language as a new subsection:
(l) Prior to making an application for a certificate of public advantage, the parties may submit an initial filing at least forty-five (45) days prior to filing the application. The initial filing shall summarize the proposed cooperative agreement, describe the affected geographic market areas and those matters described in subsections (f) and (g). The department shall review the initial filing within thirty (30) days of receipt of the filing, informing the parties of any deficiencies along with a statement of specific remedial measures as to how such deficiencies could be corrected. A review of the initial filing by the department does not constitute approval of the final application.
- Section 9 T.C.A., Section 33-2-706(b), is amended by deleting the language “33-2-703(d)” and by substituting instead the language “33-2-704(d)”.
- *P.C. 137 T.C.A., Title 33, Chapter 5, Part 1, is amended by adding the following as a
Eff. 4/26/01 new section:
- Section 1 Section 33-5-108

The department of mental health and developmental disabilities, division of developmental disabilities services, shall assess in writing the fiscal impact on licensees under title 33, chapter 2, part 4, of any change to any rule, regulation, policy or guideline relating to the staffing, physical plant or operating procedures of such licensee for rendering services pursuant to a contract, grant or agreement with the division for developmental disabilities services. Unless exigent circumstances require the change to be implemented sooner, no less than thirty (30) days before any such change in such rule, regulation, policy or guideline is to take effect, the department’s estimate of fiscal impact shall be transmitted by the deputy commissioner for developmental disabilities services to the house finance, ways and means committee, the senate finance, ways and means committee, and the comptroller of the treasury for any

appropriate review. If exigent circumstances, such as an unforeseen court order, require a change to be implemented sooner, then the division's statement describing the exigent circumstances that prevented thirty (30) days notice shall be provided to the house finance, ways and means committee, the senate finance, ways and means committee and the comptroller of the treasury not later than five (5) days after implementing the change. In such case the division shall provide the estimate of fiscal impact to the entities above within sixty (60) days after implementing the change. *[Acts 2001, ch. 137, § 1. This section has retroactive application to March 1, 2001.]*